

STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
BOARD OF MEDICINE DISCIPLINARY SUBCOMMITTEE

In the Matter of

LEWIS H. TWIGG, JR., M.D.  
License Number: 43-01-030345

File Number: 43-98-0337-00  
Docket Number: 1999-3055

FINAL ORDER DENYING RECONSIDERATION

On February 1, 2000, pursuant to a Final Order, the Disciplinary Subcommittee of the Michigan Board of Medicine, hereafter Disciplinary Subcommittee, disciplined Lewis H. Twigg, Jr., M.D., hereafter Petitioner. Specifically, Petitioner was reprimanded, fined \$1,000.00 and placed on probation for a period of 30 days for violations of sections 16221(a) and 16221(b)(i) of the Public Health Code, 1978 PA 368, as amended; and for violating section 16215(1) of the Public Health Code, supra, and 1979 AC, R 338.3170(1), which constituted violations of section 16221(g) of the Public Health Code, supra.

On March 8, 2000, Petitioner filed a request for reconsideration of the Final Order in accordance with the provisions of 1996 AACRS, R 338.1633.

On April 6, 2000, the Department of Attorney General, Health Professionals Division, filed a Response to Motion for Reconsideration taking no position on Petitioner's request for reconsideration.

The Disciplinary Subcommittee, having reviewed the request for reconsideration and response, considered the within matter at a regularly scheduled meeting held in Lansing, Michigan, on May 17, 2000. Now therefore,

IT IS HEREBY ORDERED that Petitioner's request for reconsideration is DENIED.

IT IS FURTHER ORDERED that this order shall be effective on the date signed by the Disciplinary Subcommittee's Chairperson or authorized representative as set forth below.

Dated: \_\_\_\_\_

*June 1, 2000*

**MICHIGAN BOARD OF MEDICINE  
DISCIPLINARY SUBCOMMITTEE**

By \_\_\_\_\_

*Thomas C. Lindsay II*

Thomas C. Lindsay II, Director  
Bureau of Health Services

This is the last and final page of a Final Order Denying Reconsideration in the matter of Lewis H. Twigg, Jr., M.D., File Number 43-98-0337-00, Docket Number 1999-3055, before the Disciplinary Subcommittee of the Michigan Board of Medicine consisting of two pages, this page included.

BH

**STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
BOARD OF MEDICINE DISCIPLINARY SUBCOMMITTEE**

In the Matter of

**LEWIS H. TWIGG, JR., M.D.  
License Number: 43-01-030345**

**File Number: 43-98-0337-00  
Docket Number: 1999-3055**

**FINAL ORDER**

On July 29, 1998, the Department of Consumer & Industry Services, Office of Health Services, filed an Administrative Complaint with the Disciplinary Subcommittee of the Michigan Board of Medicine, hereafter Disciplinary Subcommittee, charging Lewis H. Twigg, Jr., M.D., hereafter Respondent, with a violation of sections 16221(a) and 16221(b)(i) of the Public Health Code, 1978 PA 368, as amended; and with violating section 16215(1) of the Public Health Code, supra, and 1979 AC, R 338.3170(1), which constitute violations of 16221(g) of the Public Health Code, supra.

On April 20, 1999, the Department of Attorney General, Health Professionals Division, hereafter Health Professionals Division, filed a Superseding Administrative Complaint with the Disciplinary Subcommittee, which charged Respondent with a violation of section 16221(a) of the Public Health Code, supra, and with violating section 16215(1) of the Public Health Code, supra, which constitutes a violation of section 16221(g) of the Public Health Code, supra.

An administrative hearing was held in the matter before an administrative law judge who, on August 6, 1999, issued a Proposal for Decision setting forth recommended findings of fact and conclusions of law.

On September 10, 1999, the Health Professionals Division filed Petitioner's Exceptions to the Proposal for Decision.

The Disciplinary Subcommittee, having reviewed the administrative record, considered the within matter at regularly scheduled meetings held in Lansing, Michigan, on November 17, 1999, and December 15, 1999. During these proceedings, the Disciplinary Subcommittee accepted in part and rejected in part the administrative law judge's findings of fact and conclusions of law as set forth in the Proposal for Decision.

On January 19, 2000, the Disciplinary Subcommittee again considered the matter and accepted the Disciplinary Subcommittee's Findings of Fact and Conclusions of Law, a copy of which is attached and incorporated. Now therefore,

IT IS HEREBY ORDERED that for violations of sections 16221(a) and 16221(g) of the Public Health Code, supra, Respondent is REPRIMANDED.

IT IS FURTHER ORDERED that for the aforesaid violations of the Public Health Code, Respondent is FINED in the amount of \$1,000.00, to be paid to the State of Michigan within 30 days from the effective date of this order. The fine shall be mailed

to the Department of Consumer & Industry Services, Bureau of Health Services, Sanction Monitoring, P.O. Box 30185, Lansing, MI 48909. The fine shall be paid by check or money order made payable to the State of Michigan, and the check or money order shall clearly display (or show) the formal complaint number 43-98-0337-00.

IT IS FURTHER ORDERED that for the aforesaid violations of the Public Health Code, Respondent is placed on PROBATION for a period of 30 days. Periods of residency or practice outside Michigan shall not reduce the probationary period. The term of probation shall be as follows:

1. PLAN OF COMPLIANCE: Prior to the end of the probationary period, Respondent shall submit in writing a plan of compliance demonstrating an understanding of a physician's responsibility in the prescribing and dispensing of controlled substances. This plan shall be submitted to the Chairperson of the Disciplinary Subcommittee, c/o Department of Consumer & Industry Services, Bureau of Health Services, Sanction Monitoring, P.O. Box 30670, Lansing, MI 48909.

IT IS FURTHER ORDERED that Respondent shall be automatically discharged from probation at the end of the probationary period, PROVIDED Respondent has complied with the terms of this order and the plan of compliance is acceptable to the Chairperson of the Disciplinary Subcommittee.

IT IS FURTHER ORDERED that in the event Respondent violates any provision of this order, and if such violation is deemed to constitute an independent

violation of the Public Health Code or the rules promulgated thereunder, the Disciplinary Subcommittee may proceed to take disciplinary action pursuant to 1996 AACRS, R 338.1632 and section 16221(g) of the Public Health Code, supra.

IT IS FURTHER ORDERED that this order shall be effective 30 days from the date signed by the Disciplinary Subcommittee's Chairperson or its authorized representative, as set forth below.

Dated: February 1, 2000

**MICHIGAN BOARD OF MEDICINE  
DISCIPLINARY SUBCOMMITTEE**

By Carole Hakala Engle  
Carole Hakala Engle, Director  
Health Licensing Division

This is the last and final page of a Final Order in the matter of Lewis H. Twigg, Jr., M.D., File Number 43-88-0337-00, Docket Number 1999-3055, before the Disciplinary Subcommittee of the Michigan Board of Medicine, consisting of four pages, this page included.

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**STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
BOARD OF MEDICINE DISCIPLINARY SUBCOMMITTEE**

In the Matter of

**LEWIS H. TWIGG, JR., M.D.**  
**License Number: 43-01-030345**

**File Number: 43-98-0337-00**  
**Docket Number: 1999-3055**

**DISCIPLINARY SUBCOMMITTEE'S FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

The Disciplinary Subcommittee of the Michigan Board of Medicine, hereafter Disciplinary Subcommittee, accepts in part and rejects in part the findings of fact and conclusions of law in the Proposal for Decision, dated August 6, 1999, in the matter of Lewis H. Twigg, Jr., M.D., hereafter Respondent.

**FINDINGS OF FACT**

Respondent entered into a Stipulation dated May 3, 1999, which includes the following statement: "Respondent admits the factual allegations of the Superseding Administrative Complaint, but denies the legal allegations of the Superseding Administrative Complaint." Paragraph 6 of the April 19, 1999, Superseding Complaint states as follows: "Until May of 1998, Respondent delegated the administration of Valium tablets to unlicensed medical assistants. Under standard procedure at the WomensChoice Health Care Clinic prior to June 1998, medical assistants were allowed to administer one 5 mg Valium tablet to a patient who was going to undergo a pregnancy

termination." Thus, the Disciplinary Subcommittee finds that Respondent's conduct, as set forth in paragraph 6 of the Superseding Administrative Complaint dated April 19, 1999, constituted delegation of a act, task, or function to other individuals, in accordance with section 16215(1) of the Public Health Code, supra.

The Disciplinary Subcommittee finds that the conduct of the unlicensed medical assistants, when handing Valium (a schedule 4 controlled substance) to Respondent's patients who then ingest the medication, fits the definition of administering as set forth in section 7103(1) of the Public Health Code, supra. The Disciplinary Subcommittee further finds that this conduct constituted administering whether or not it was performed outside of Respondent's presence or prior to Respondent's arrival at the facility.

The Disciplinary Subcommittee finds that Respondent was aware that unlicensed medical assistants were administering Valium to his patients without a physician's order. Further, Respondent knew that the decision to administer or not administer the medication to his patients was made by these unlicensed individuals.

Respondent testified as follows:

Q. So then on the times that you didn't personally order the pill, personnel, whoever that might be, made their own observations of the patient, sensed that they were anxious, and took it upon themselves to administer this Valium?

A. Yes, sir.



- Q. What -- and did you know this was happening?
- A. I knew it had happened, yes, I did.
- Q. Okay. And because it was the company policy, you never really did anything about it?
- A. No, sir. [6-8-99 TR 30]

Subsequently, on cross-examination, Respondent testified as follows:

- Q. Okay. And you were aware that patients you were treating had been given Valium?
- A. I was aware.
- Q. Okay. Were there any licensed personnel, like nurses, physician's assistants?
- A. No, ma'am.
- Q. And that was true the whole time that you worked there?
- A. It was true the whole time that I -- as far as I can remember.
- Q. Okay. So the only staff that would have been administering Valium would have been the unlicensed assistants?
- A. Yes, ma'am. [6-8-99 TR 38-39]

In his capacity as a physician, Respondent bears the responsibility of ensuring that any personnel working under him, whether or not actually employed by Respondent, comply with all applicable state laws. As set forth in section 7303a(4)(a) of

the Public Health Code, supra, a schedule 2 to 5 controlled substance can only be administered on the order of a licensed prescriber by an individual who is licensed as a practical nurse, registered nurse or physician's assistant. Thus, the Disciplinary Subcommittee finds that Respondent was responsible for the conduct of the unlicensed medical assistants which was contrary to section 7303a(4)(a) of the Public Health Code, supra.

Finally, the Disciplinary Subcommittee finds that Respondent admitted his conduct was in violation of the Public Health Code. In his testimony, Respondent made the following statement:

- A. I deeply regret that I have violated the Health Code, which would potentially affect the health, safety of my patients. I was unaware of the codes or prohibition, but I – but had I been aware, I would have never allowed this violation to occur.... I followed in the footsteps of what was practiced for many years, allowing non-nurses to pass a medicine, in this case, Valium to patients.... I am deeply regretful of this, and this wrong assumption will plague me for the rest of my life. [6-8-99 TR 42-43]

Therefore, as a result of the above, the Disciplinary Subcommittee finds that Respondent delegated the administration of Valium, a schedule 4 controlled substance, to unlicensed medical assistants.

The Disciplinary Subcommittee also notes that in the first full paragraph on page 10, the administrative law judge states that the activity occurred "within the confines

of a duly licensed medical establishment." The Disciplinary Subcommittee finds that the WomansChoice Health Care Clinic is a non-licensed facility.

The Disciplinary Subcommittee accepts the remainder of the administrative law judge's Findings of Fact in the Proposal for Decision.

### CONCLUSIONS OF LAW

The Disciplinary Subcommittee rejects the conclusion of the administrative law judge that Respondent did not violate sections 16221(a), 16221(g) and 16215(1) of the Public Health Code, supra.

As set forth in the Disciplinary Subcommittee's Findings of Fact, paragraph 6 of the Superseding Administrative Complaint dated April 19, 1999, states that Respondent delegated the administration of Valium tablets, a schedule 4 controlled substance, to unlicensed medical assistants. It also states that it was standard procedure at the facility, prior to June 1998, to allow medical assistants to administer Valium to a pregnancy termination patient. Further, Respondent entered into a Stipulation dated May 3, 1999, in which Respondent admitted to the factual allegations as set forth in the Superseding Administrative Complaint. Thus, the Disciplinary Subcommittee concludes that Respondent's conduct constituted delegation of a task, act, or function to other individuals, in accordance with section 16215(1) of the Public Health Code, supra.

As also set forth above in the Disciplinary Subcommittee's Findings of Fact, the conduct of the unlicensed medical assistants, in handing Valium to Respondent's patients who then ingest the medication, fits the definition of administration as set forth in the Public Health Code. In addition, Respondent was aware that unlicensed personnel were administering Valium to his patients without a physician's order, and knew that the decision to administer Valium was made by the unlicensed medical assistants. Further, Respondent, as a physician, was responsible for the conduct of any personnel working under him, whether or not the individuals were actually employed by Respondent, and must ensure that these individuals comply with all applicable state laws.

As further set forth in the Disciplinary Subcommittee's Findings of Fact, Respondent admitted during his hearing testimony that his conduct violated the Public Health Code.

Therefore, as a result of the above, the Disciplinary Subcommittee concludes that Respondent improperly delegated administration of a schedule 4 controlled substance, Valium, to unlicensed medical assistants.

The Disciplinary Subcommittee concludes that Respondent's conduct evidences a violation of section 16221(a) of the Public Health Code, supra. The Disciplinary Subcommittee also concludes that Respondent's conduct is contrary to section 16215(1) of the Public Health Code, supra, which constitutes a violation of section 16221(g) of the Public Health Code, supra.

The Disciplinary Subcommittee accepts the remainder of the administrative  
law judge's Conclusion of Law in the Proposal for Decision.

Date Accepted: 1/19/0

MICHIGAN BOARD OF MEDICINE  
DISCIPLINARY SUBCOMMITTEE

By: 

Disciplinary Subcommittee Chairperson

**STATE OF MICHIGAN**  
**DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES**  
**OFFICE OF LEGAL SERVICES**

**In the matter of:**

**Office of Health Services,**

**Petitioner**

**v**

**Lewis H. Twigg, Jr.**

**Respondent.**

**Docket No.: 1999-3055**

**Agency No.: 43-98-0337-00**

**Agency Name: Bureau of Health  
Services**

**Case Type: Sanction**

Issued and entered  
this 10<sup>th</sup> day of August 1999  
by  
**STEPHEN B. GOLDSTEIN**  
**ADMINISTRATIVE LAW JUDGE**

**PROPOSAL FOR DECISION**

**PROCEDURAL HISTORY**

A hearing was held in this matter on June 8, 1999 at 1:30 P.M. in the hearing rooms of the Michigan Department of Consumer and Industry Services, Office of Legal Services, Hearings Division, 611 W. Ottawa St., Lansing, Michigan.

Stephen B. Goldstein presided as Administrative Law Judge.

Amy Rosenberg, Assistant Attorney General, appeared on behalf of the Bureau of Health Services (Petitioner).

C. Frederick Robinson, Attorney at Law, appeared on behalf of Lewis H. Twigg, Jr. (Respondent).

This matter commenced with the filing by the Petitioner of an Administrative Complaint dated July 29, 1998 alleging violations of Michigan's Public Health Code, 1978 PA 368, as amended (Code), MCL 333.1101 et seq; MSA 14.15(1101) et seq.

On October 15, 1998, Respondent, by and through counsel, filed an Answer to Administrative Complaint.

A Notice of Hearing was issued and entered on October 27, 1998 scheduling this matter for a contested case hearing to commence on Monday, December 14, 1998 at 9:00 A.M.

By letter dated November 17, 1998, Petitioner requested that this matter be stayed pending submission of a proposed consent order and stipulation to the Michigan Board of Medicine (Board). An Order for Stay of Formal Hearing was therefore issued and entered on November 20, 1998.

By letter dated April 1, 1999, Petitioner requested that this matter be placed back on the hearing docket, as the parties had been unable to reach an agreement. Thereafter, an Order for Rescheduled Hearing was issued and entered on April 9, 1999, scheduling this matter for a hearing to commence at 9:00 A.M. on Tuesday, June 8, 1999.

On April 19, 1999, Petitioner filed a Superseding Administrative Complaint which supersedes in full the Administrative Complaint dated July 29, 1998.

Due to a conflict in the hearing schedule, the time of the June 8, 1999 hearing was changed to start at 1:30 P.M. instead of at 9:00 A.M. An Order for Change of Time dated June 1, 1999 was issued and entered to that effect.

The June 8, 1999 hearing commenced as scheduled at 1:30 P.M.

**ISSUES AND APPLICABLE LAW:**

The issue in this matter is whether Respondent violated the Code as alleged in the Petitioner's April 19, 1999 Superseding Administrative Complaint.

The specific issues in this matter are whether Respondent violated Section 16221(a), and Section 16215(1) and therefore Section 16221(g) of the Code. Those Sections of the Code provide as follows:

***"Sec. 16221. The department may investigate activities related to the practice of a health profession by a licensee, a registrant, or an applicant for licensure or registration. The department may hold hearings, administer oaths, and order relevant testimony to be taken and shall report its findings to the appropriate disciplinary subcommittee. The disciplinary subcommittee shall proceed under section 16226 if it finds that 1 or more of the following grounds exist:***

***(a) A violation of general duty, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition which impairs, or may impair, the ability to safely and skillfully practice the health profession."***

\*\*\*



***"(g) A violation, or aiding or abetting in a violation, of this article or of rules promulgated under this article."***

***" \* \* \* "***

***"Sec. 16215. (1) A licensee who holds a license other than a health profession subfield license may delegate to a licensed or unlicensed individual who is otherwise qualified by education, training, or experience the performance of selected acts, tasks, or functions where the acts, tasks, or functions fall within the scope of practice of the licensee's profession and will be performed under the licensee's supervision. An act, task, or function shall not be delegated under this section which, under standards of acceptable and prevailing practice, requires the level of education, skill, and judgment required of a licensee under this article."***

***" \* \* \* "***

**FINDINGS OF FACT:**

The parties entered into a Stipulation of Fact on May 4, 1999. The Stipulation essentially provides that Respondent admits the factual allegations of the Superseding Administrative Complaint. However, it remains Respondent's position that those admitted factual allegations do not constitute violations of the Code.

At all times relevant to the Superseding Administrative Complaint, Respondent worked on a part-time basis as a physician at the Womans' Source Health Care Clinic in Lansing, Michigan. During the time Respondent was a physician at this facility, the facility had an internal policy which allowed unlicensed assistants to provide one 5 mg Valium tablet to a patient who was scheduled to undergo a pregnancy termination. It appears that only patients who were experiencing pre-surgical anxiety were given this drug. This policy apparently remained in effect until May, 1998. In June, 1998, the owners of the facility

changed the policy so that only physicians were allowed to administer the pre-surgical Valium to its patients.

During the hearing, Respondent offered one (1) exhibit into the record. Petitioner offered no exhibits.

**Respondent Exhibit 1 is a copy of a multi-page document evidencing Respondent's participation in a continuing education course in Controlled Substance Management offered by the Case Western Reserve University School of Medicine in Cleveland, Ohio.**

\*\*\*\*\*

Respondent contends that he has committed no violations of the Code because it was neither his decision to allow unlicensed individuals to provide the Valium tablets nor was it he who directly delegated this task. Respondent contends it was the owners of the clinic who directly delegated this task as part and parcel of the clinic's policy.

Respondent further contends that "administering" a drug does not mean simply handing a drug to someone who then takes the drug on their own. He contends that the code sections at issue are not meant to apply to such a situation, where one merely places into the hands of another a medication for usage by that patient.

Respondent testified on his own behalf that he has been a licensed physician since 1967 and has never had any problems with his license before this situation. He specializes in obstetrics and gynecology, and is a member of the American Board of Obstetrics and Gynecology. He was certified by this board in 1976 and re-certified in 1999. He is also on staff at Hurley Medical Center in Flint, Michigan.

Respondent indicated that he has been associated with the Womens' Source Health Care Clinic for the past eight years. He stated that women who experience pre-surgical anxiety are routinely given one 5 mg tablet of Valium before the procedure. He stated that it was the practice of the clinic to allow clinic personnel to hand the patient the Valium tablet at which time the patient placed the tablet in their mouths and then ingested them with water. He further indicated that this policy was established long before he ever began working at the clinic. Respondent also stated that in most, if not all, cases, the tablet was ordered by the owners of the clinic, not him. He indicated that if he ordered the Valium, it would be administered by him and usually by injection, not orally.

Respondent testified that when he ordered the Valium tablet, he instructed personnel to retrieve the drug for him, they would then bring the pill to him and he would then give the pill directly to the patient. He also indicated that there were many occasions where personnel of the clinic made their own observations about a patient's anxiety level and made the decision to give that patient the Valium without his prior approval. He also stated that there were some instances where a patient was given the drug before he even arrived at the clinic. He indicated he knew this was occurring, however, did nothing about it because he knew it was the clinic's long standing policy and thought there was nothing wrong with it.

Respondent testified that the complaint filed against him by Petitioner has had a tremendous impact on him, and that he now realizes that he may have made a mistake in judgment in allowing this activity to occur around him. He indicated that as a result of this

situation, he participated in a continuing education course in controlled substance administration and management in May, 1999. (*Respondent Exhibit 1*)

**CONCLUSIONS OF LAW:**

The principles that govern judicial proceedings also apply to administrative hearings. 8 Callaghan's Michigan Pleading and Practice (2d ed) Section 60.48, page 280.

The burden of proof is upon the Petitioner to establish, by a preponderance of the evidence, that Respondent has violated the Code as alleged in the Complaint. 1980 AACS R 338.973.

**Count I**

**Violation of Section 16221(a) of the Code**

By this charge, the Petitioner asserts that Respondent's conduct in either directly or indirectly permitting unlicensed clinic personnel to supply anxious patients with Valium is evidence of a violation of his general duties as a physician, consisting of negligence or failure to exercise due care, including negligent delegation to or supervision of employees or other individuals, whether or not injury results, or any conduct, practice, or condition which impairs, or may impair, the ability to safely and skillfully practice the health profession.

Section 7103(1) defines what is meant by "administer" under the Code. It provides as follows:

***Sec. 7103. (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or other means, to the body of a patient or research subject by a practitioner, or in the practitioner's presence by his or her authorized agent, or the patient or research subject at the direction and in the presence of the practitioner.***

The evidence adduced at hearing establishes that unlicensed personnel of the Womens' Source Health Care Clinic retrieved 5 mg Valium tablets under the clinic's policy of allowing them to do so, took the drug to the patient, gave the drug to the patient, and the patient then placed the drug in their own mouths and ingested it. The evidence further establishes that in most, if not all, cases, this task was delegated to unlicensed personnel by owners of the clinic itself and not Respondent. The evidence also establishes that in most, if not all, cases, the act of giving anxious patients the Valium tablets was performed outside of the presence of Respondent, and sometimes accomplished before Respondent was physically on the premises.

This scenario does not comport with the definition of "administer" as that term is defined by Section 7103(1). This definition requires that the drug be "directly applied" to the patient by either the practitioner or by the practitioner's agent in the practitioner's presence. The evidence adduced does not support such a conclusion. Furthermore, there is insufficient evidence to definitively conclude that any individual clinic staff member was Respondent's agent. Respondent was not the owner of the clinic, but rather, an employee.

A finding and conclusion is made by this Judge that staff members were the clinic's agents, not Respondent's. Although it may have been prudent or wise for Respondent to have questioned the clinic's policy, or perhaps even left the clinic's employ, he has committed no violation of the Code by failing to do so, especially considering the fact that the Valium appears to have been supplied by the clinic to its anxious patients in a responsible manner.

For the foregoing reasons, this Judge finds and concludes that Petitioner has failed to establish, by a preponderance of the evidence, that Respondent has violated Section 16221(a) of the Code.

### **Count II**

#### **Violation of Section 16215 and therefore 16221(g) of the Code**

By this charge, the Petitioner asserts that Respondent's passive acceptance of the clinic's policy of allowing unlicensed personnel to "supply" anxious patients with small doses of Valium before surgery is evidence that Respondent has illegally delegated this task to unlicensed individuals.

The preponderance of the evidence indicates that Respondent never directly delegated the task of handing anxious patients the 5 mg dose of Valium. He indicated that when he ordered Valium for anxious patients, he personally handed the drug to his patients. Although he knew that unlicensed personnel were "transferring" to anxious patients the pre-surgical Valium tablets, he had no control over these acts because he, as an employee of this clinic, had no right to change the clinic's policy. It is the clinic who has

engaged in illegal acts, if any, not Respondent.


This Judge does not believe that the language of Section 16215 contemplates the factual scenario at work in this case. Any competent adult, whether licensed or unlicensed, is presumably capable of retrieving an object and then handing that object to another individual. The evidence produced in this matter establishes only that a competent individual retrieved a 5 mg tablet of Valium for a patient that individual observed to be anxious. Then, with the patient's consent, the individual who retrieved the medication merely "handed" the tablet to the patient. The patient then self-administered the tablet with water. All of this activity was accomplished within the confines of a duly licensed medical establishment which, by all accounts, appears to have operated in a safe manner.

Based upon the foregoing rationale, this Judge finds and concludes that Petitioner has failed to establish, by a preponderance of the evidence, that Respondent violated Section 16215(1) or, as a result, Section 16221(g) of the Code as alleged.

**PROPOSED DECISION:**

It is PROPOSED by the Presiding Judge that Respondent be found to have not violated Section 16221(a), or Section 16215(1) and therefore Section 16221(g) of the Code as alleged in Petitioner's Superseding Administrative Complaint.

Within fifteen (15) days after service of this Proposal for Decision, a party may file exceptions thereto and present written arguments. Within five (5) days thereafter, an opposing party may file a response to the exceptions.



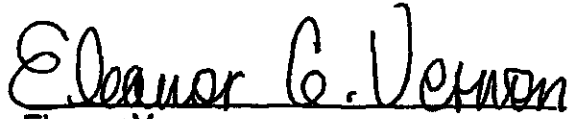
STEPHEN B. GOLDSTEIN  
ADMINISTRATIVE LAW JUDGE



Proposal For Decision  
Lewis H. Twigg, Jr., M.D.  
Docket No. 1999-3055  
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**PROOF OF SERVICE**

I hereby certify, to the best of my knowledge, information and belief, that a copy of the foregoing documents were served upon all parties and/or attorneys of record in this matter by mailing same to them at their respective addresses as disclosed by the file, with postage fully prepaid on the 16th day of August, 1999.



Eleanor Vernon  
Office of Legal Services

Lewis H. Twigg, Jr., M.D.  
4250 North Saginaw Street  
Flint, MI 48505

C. Frederick Robinson, Esq.  
2501 North Saginaw St.  
Flint, Michigan 48505-4433

a copy was sent ID mail to:

Amy Rosenberg, Assistant Attorney General  
Department of Attorney General  
Health Professionals Division  
P.O. Box 30212  
Lansing, MI 48913

Ray R. Garza, Manager  
Complaint Section  
Office of Health Services  
Department of Consumer  
& Industry Services  
P.O. Box 30670  
Lansing, MI 48909-8170

STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES  
BUREAU OF HEALTH SERVICES  
BOARD OF MEDICINE  
DISCIPLINARY SUBCOMMITTEE

In the Matter

LEWIS H. TWIGG, JR., MD.  
\_\_\_\_\_ /

Complaint No. 43-98-0337-00  
Docket No. 98-1083

**SUPERSEDING ADMINISTRATIVE COMPLAINT**

Attorney General Jennifer M. Granholm, through Assistant Attorney General Amy L. Rosenberg, on behalf of the Department of Consumer & Industry Services, Complainant herein, files the within Superseding Administrative Complaint against Lewis H. Twigg, Jr., M.D. (Respondent), alleging upon information and belief as follows:

1. The Board of Medicine, an administrative agency established by the Public Health Code (Code), 1978 PA 368, as amended; MCL 333.1101 *et seq*; MSA 14.15(1101) *et seq*, is empowered to discipline licensees under the Code through its Disciplinary Subcommittee.
2. Respondent is currently licensed to practice medicine in the State of Michigan and holds a current controlled substance license.
3. At all relevant times, Respondent was employed at WomansChoice Health Care Clinic in Lansing, Michigan.

4. 1979 AC, R 338.3170, an administrative rule promulgated by the Board of Pharmacy, states that "a prescriber in the course of his professional practice only, may dispense or administer, or both, a controlled substance listed in schedules 2 to 5 or he may cause them to be administered by a nurse or intern under his direction or supervision." By its terms, this rule only allows physicians to delegate the administration of controlled substances to nurses or interns. This rule imposes a general duty upon physicians holding controlled substance licenses.

5. Valium (diazepam) is a schedule 4 controlled substance, indicated for the management of anxiety disorders and the short term relief of anxiety symptoms.

6. Until May of 1998, Respondent delegated the administration of Valium tablets to unlicensed medical assistants. Under standard procedure at the WomansChoice Health Care Clinic prior to June 1998, medical assistants were allowed to administer one 5 mg Valium tablet to a patient who was going to undergo a pregnancy termination.

7. In June of 1998, the owners/administrators of WomansChoice Health Care Clinic adopted a new policy, under which only physicians may administer controlled substances. Thus, Respondent no longer allows medical assistants to administer Valium.

#### COUNT I

Respondent's conduct, as set forth in paragraph 6 above, constitutes a violation of section 16221(a) of the Public Health Code, which allows a Disciplinary Subcommittee to impose a sanction upon a licensee for "a violation of general

duty...including negligent delegation to or supervision of employees or other individuals, whether or not injury results."

## COUNT II

Respondent's conduct, as set forth in paragraph 6 above, constitutes a violation of section 16215(1) of the Public Health Code, which prohibits licensees from delegating acts, tasks or functions to individuals who are not otherwise qualified by education, training or experience, and which also prohibits the delegation of acts, tasks or functions, which, under standards of acceptable and prevailing practice, require the level of education, skill and judgment required of a licensee. As a violation of section 16215, Respondent's conduct constitutes a violation of section 16221(g) of the Public Health Code, which allows the Disciplinary Subcommittee to impose a sanction upon a licensee for a violation of Article 15 of the Code.

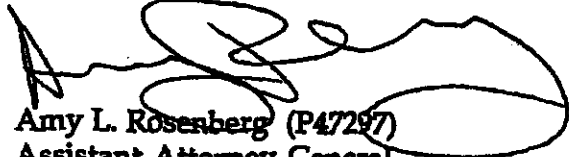
THEREFORE, the Administrative Complaint previously filed against Respondent on September 30, 1998, is hereby WITHDRAWN and replaced in full by this Superseding Administrative Complaint.

RESPONDENT IS HEREBY NOTIFIED that, pursuant to Section 16231(7) of the Public Health Code, Respondent has 30 days from receipt of this Superseding Complaint to submit a written response to the allegations contained in it. The written response shall be submitted to the Department of Consumer and Industry Services, Office of Legal Services, P.O. Box 30018, Lansing, Michigan 48909, with a copy to the undersigned Assistant Attorney General. Further, pursuant to Section 16231(8) of the Code, failure to submit a written response within 30 days shall be

treated as an admission of the allegations contained in the Superseding Complaint and shall result in transmittal of the Superseding Complaint directly to the Disciplinary Subcommittee for imposition of an appropriate sanction.

Respectfully submitted,

JENNIFER M. GRANHOLM  
Attorney General



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Dated: April 19, 1999

PROOF OF SERVICE

The undersigned certifies that a copy of the above document was served on the attorneys of record or other parties appearing in pro per in the above cause by mailing it to them at their last known address with first class postage fully prepaid on the 19th day of April, 1999.

C. Frederick Robinson  
2501 North Saginaw Street  
Flint, MI 48505



Denise R. Richards